IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.4129 OF 2007

Ananda Raghu Sawant and another. ..Petitioners.
Vs.
Shankar Bapu Mane and ors. ..Respondents.

Mr.P.D.Dalvi for the Petitioners.
Mr.P.B. Bhargude for the Respondent Nos. 1 to 3.

CORAM: A.S. OKA, J.
DATE : SEPTEMBER 4, 2007

P.C.

1. Heard learned counsel appearing for the parties.

2. The petitioners are the original plaintiffs. The application for temporary injunction filed by the petitioners was allowed by the Trial Court. In the appeal preferred by the respondents, Appellate Court has interfered and passed an order setting aside the order of temporary injunction passed by the Trial Court in favour of the petitioners.

3. The learned counsel for the petitioners has pointed out the relevant averments made in the pleadings as well as findings recorded by the Courts below. He has invited my attention to the finding of the Appellate Court that if injunction was granted, the petitioners will prolong the matter pending before the Revenue Authorities and will restrain the true owner from

entering into the suit land. He also submitted that the clear finding recorded by the Trial Court as regards the possession of the petitioners has been unnecessarily disturbed by the Appellate Court. He submitted that in view of the order passed by this court in the Writ Petition, independently of all the entries in revenue record, the Appellate Court should have considered the case of the petitioners.

4. I have carefully considered the submissions. The perusal of the order passed by the Appellate Court shows that the entire material on record was considered by the Appellate Court. One of the reasons given by the Appellate Court is that the order dated 28th November, 2006 of the Trial Court is cryptic. Apart from the revenue entries, the Appellate Court found that except tax receipts there was no other material on record to support the case of the petitioners that they were in possession.

5. The discretionary order passed by the Appellate Court is based on appreciation of material produced by the parties. Further, since the date of passing of the order by the Appellate Court i.e. from 28th November,2006 there is no ad-interim relief in favour of the petitioners. No case is made out for interference with the discretionary order passed by the Appellate

Court in this Petition under Article-227 of the Constitution of India. However, it must be clarified that the Trial Court will decide the suit without being influenced by the findings recorded by the Appellate Court which are obviously findings of tentative nature. All the contentions of the parties on the merits of the suit are kept open. The Trial Court to decide the suit as expeditiously as possible and preferably before the end of December,2007.

6. Parties to act on a copy of this order duly authenticated by the registry of this Court.

(A.S. OKA, J.)